

FILED

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UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

OCT 05 2015

MATTHEW J. DYKMAN
CLERK

In the Matter of the Search of:

The Residence Located at Case No. 15-MR-576
25102 Hwy 70, Mescalero, NM;
and Wilson Burgess

TELEPHONIC APPLICATION FOR SEARCH WARRANT
July 18, 2015

PARTIES ON TELEPHONE CALL:

UNITED STATES MAGISTRATE JUDGE WILLIAM P. LYNCH
FBI SPECIAL AGENT DANIEL J. SARKOZY

Case No. 15-MR-576
In Re: Search of 25102 Hwy 70 and Burgess

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1 AGENT SARKOZY: Okay. I am recording, Your
2 Honor.

3 THE COURT: All right. If I could ask you
4 to raise your right hand.

5 Do you solemnly swear or affirm that the
6 information you give me telephonically will be true and
7 correct to the best of your knowledge, information, and
8 belief?

9 AGENT SARKOZY: I do, Your Honor.

10 THE COURT: All right. You may proceed,
11 then, Agent Sarkozy.

12 AGENT SARKOZY: Your Honor, my name is
13 Daniel J. Sarkozy. I'm a special agent of the FBI. I
14 have 19 and a half years of experience. I'm assigned
15 to work the Mescalero Apache Indian Reservation since
16 2006.

17 This morning, July 18th, 2015 at approximately
18 7:15 -- correction, 11:00 AM, a caller, Parnell Evans,
19 called BIA on behalf of Fritz Burgess requesting police
20 assistance at the Burgess's residence of
21 25102 Highway 70, Mescalero, New Mexico.

22 Fritz Burgess had advised Evans by telephone
23 that his brother, Wilson Burgess, had assaulted him,
24 causing injury to his eye and the back of his head.

25 BIA had responded -- or based upon Parnell's

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1 call to BIA, BIA responded to that address only knowing
2 that Fritz Burgess had wanted three individuals removed
3 from his residence. Those three individuals were
4 Wilson Burgess, Shawna Morgan, and Kevin Morgan. BIA
5 responded and escorted those three individuals from the
6 property not knowing that Fritz Burgess was inside the
7 house injured.

8 A short time later, Fritz Burgess called
9 Parnell Evans again, requesting medical assistance,
10 complaining that bleeding -- serious bleeding to the
11 back of his head and feeling faint.

12 Mescalero Fire and Rescue found Fritz Burgess
13 inside his house suffering from a dislocated shoulder,
14 a lacerated kneecap, significant bruising across both
15 of his arms and his entire back, and a serious
16 laceration to the back of his head.

17 Parnell Evans, the cousin of Fritz Burgess, also
18 traveled to that residence. And while he was there, he
19 was called by Shawna Morgan. Shawna Morgan had advised
20 that Fritz and Wilson Burgess had been fighting all
21 morning. Wilson -- correction. Shawna Morgan advised
22 witnessing Wilson pushing his brother Fritz backwards,
23 causing him to strike his head on the edge of the
24 countertop or the sink.

25 Your Honor, your affiant interviewed Shawna

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1 Morgan this morning, and she related that same story to
2 me. She witnessed Wilson push Fritz backwards into the
3 countertop causing the injury to his head.

4 At the same time that Fire and Rescue had gone
5 to the Burgess residence, BIA responded again in
6 support of that call. They have maintained control of
7 that residence since going to the residence the second
8 time, which, I believe, is about 11:30 this morning.

9 After that, the FBI and BIA agents located and
10 arrested Wilson Burgess for the assault of his brother,
11 Fritz Burgess, on Mescalero tribal charges.

12 Breathalyzer examination revealed Wilson Burgess to
13 have a .246 breath alcohol and could not be
14 interviewed.

15 The residence located at 25102 Highway 70,
16 Mescalero, New Mexico, is owned and occupied by both
17 Wilson and Fritz Burgess, brothers.

18 Based upon the information contained in this
19 affidavit, your affiant believes that one Wilson
20 Burgess assaulted Fritz Burgess inside the residence
21 located at 25102 Highway 70 Mescalero, New Mexico, in
22 violation of Title 18 Section 1153, Section 113(a)(3)
23 and 113(a)(6), and that evidence of the assault remains
24 inside the Burgess residence.

25 Your affiant seeks authorization for a federal

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1 search warrant to search the residence located at
2 25102 Highway 70, Mescalero, New Mexico, and to seize
3 blood-spatter evidence, any possible blunt instruments
4 that may have been used during the assault of Fritz
5 Burgess, and to collect or seize any bloodstained
6 clothing, footwear or towels that could be found inside
7 the residence.

8 Your affiant also seeks the search of the body
9 of Wilson Burgess to seize a buccal or oral swab as a
10 sample of his DNA.

11 With that, Your Honor, that would be my
12 affidavit.

13 THE COURT: Thanks. I find that there's
14 probable cause to approve a search of the residence for
15 the items that you've outlined. And I'll direct you on
16 the search warrant, then, to sign my signature and to
17 put underneath it, "Per direction of judge by
18 telephone."

19 Once you've done that, then you may execute the
20 search warrant. And then on Monday, you can file
21 copies of the search warrant and search warrant
22 application with the court.

23 AGENT SARKOZY: I'll do exactly as you say,
24 Your Honor. And I will send you a copy of this
25 recording, a copy of my notes that I've read from, as

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1 well as a copy of the return of the warrant as ordered
2 to be executed by you.

3 THE COURT: Thanks. I think that's all you
4 need to do then.

5 AGENT SARKOZY: Your Honor, thank you very
6 much.

7 THE COURT: Thank you. Bye-bye.

8 AGENT SARKOZY: Goodbye.

9 [End of recording.]
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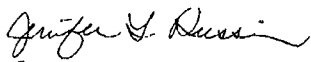
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REPORTER'S CERTIFICATE

I, Jenifer L. Russin, CCR #182, a Certified Court Reporter, do hereby certify that the proceedings of the above-entitled cause were reported by me stenographically, and that the within transcript is a true and accurate transcription of my shorthand notes.

I FURTHER CERTIFY that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.


Jenifer L. Russin, RDR, CRR
Certified Court Reporter #182
License Expires: 12/31/2015